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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,379	10/09/2003	Luis De Taboada	ACULSR.005CP1	6100

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EXAMINER	
SHAY, DAVID M	

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/682,379	TABOADA ET AL.	
	Examiner	Art Unit	
	david shay	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *January 28, 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *Jan. 28, 2005 etc.*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The amendment filed December 11, 2003; February 2, 2004; and February 2, 2004 are objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "and U.S. Provisional Application No. 60/504,142" and subsequent amendments to this phrase.

Applicant is required to cancel the new matter in the reply to this Office Action.

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35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The positive recitation of "the scalp" is non-statutory.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 47-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 47—49 exactly what is intended to be encompassed by the term "electromagnetic energy" is unclear, as applicant seems to feel that this term encompasses magnetic energy alone. These claims are too indefinite to apply art to.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 8-11, 14, 19, 22, and 24-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tatebayashi et al.

There is nothing to prevent the apparatus of Tatebasyashi et al from being used on the head. The photons will scatter and after multiple scatterings, illuminate the entire brain. The inner cylinder is cross hatched as metal, and will therefore conduct heat from the sclap if brought into contact therewith.

Claims 1-10, 14-17, 19, 20, 22, and 24-30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chess.

Claims 35 and 36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Oron et al ('974).

Claims 1-6, 8-10, 14, 19, 22-38, 44-46, 51-54, and 57-59, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Oron.

Diode lasers inherently produce a small continuum of frequencies and thus produce plural wavelengths. Any slight delay in the actuation of the lasers will result in one wavelength being delivered subsequent the other

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chess in combination with Meserol and Kuesch et al. Chess teaches a device such as claimed except for the use of a glycerol. Meserol teach a device for applying light to the skin wherein the transmission of the light is enhanced by hydrating the skin. Kuesch et al teach producing skin hydration using glycol. It would have been obvious to the artisan or ordinary skill to employ glycol as taught by Kuesch et al in the method of Chess, since this increases the transmission of laser light through the skin surface, as taught by the method of Meserol, thus producing a device and method such as claimed.

Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chess. Chess teaches a method such as claimed except the use of air per se as the coolant. It would have been obvious to the artisan of ordinary skill to employ air as the coolant, since Chess teaches that any transparent gas can be used, and air is readily available and provides no unexpected result, thus producing a device such as claimed.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chess in combination with Eckhouse et al. The teachings of Chess are essentially those already set forth above. Eckhouse et al teach the use of a gel to cool the skin during light application. It would have been obvious to the artisan of ordinary skill to employ the gel of Eckhouse et al in the

method of Chess, since this also provides cooling, and the particular form of the coolant of Chess can take many forms, thus producing a method such as claimed.

Claim 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oron in combination with Rosen et al. Oron teaches a method as claimed except for the electroluminescent sheet. Rosen et al teach the use of a sheet of material including electroluminescent devices and teaches that optical fibers are also used in the prior art. It would have been obvious to the artisan of ordinary skill to employ the electroluminescent sheet of Rosen et al in the method of Oron, since this also provides large area coverage, or to employ woven optical fibers, since these are known light emitting sheet material used for light application, and are not critical, thus producing a method such as claimed.

Claim 55, 56, 60, and 61-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oron. Oron teaches a method as claimed except for the specific intensity, treatment interval, and treatment time. It would have been obvious to the artisan of ordinary skill to employ the claimed intensities, treatment intervals, and treatment times in the method of Oron, since these are known light intensities and treatment times for laser therapy, are not critical, and produce no unexpected result, thus producing a method such as claimed.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oron in combination with Mueller et al. Oron teaches a method as claimed except for the electroluminescent sheet. Mueller et al teach the use of ultrasound in combination with laser light to encourage revascularization. It would have been obvious to the artisan of ordinary skill to employ the ultrasound and laser combination of Mueller et al in the method of Oron , since this enables revascularization, which would mitigate the effects of ischemia, since the new blood

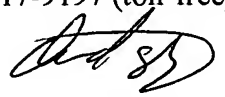
vessels would be able to deliver oxygen to the affected tissues, thus producing a method such as claimed.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oron in combination with Lo et al. Oron teaches a method such as claimed, but does not specify when the treatment should be administered. Lo et al teach that times several hours after the injury are among the ideal times to provide treatment. Thus it would have been obvious to the artisan of ordinary skill to begin delivering light to the stroke victim several hours after the stroke in the method of Oron, since this is a good time to begin treatment, as taught by Lo et al, thus producing a method such as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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